

4 Official Opinions of the Compliance Board 161 (2005)

**EXCEPTION PERMITTING CLOSED SESSION – LEGAL
ADVICE – EXPLANATION BY COUNSEL OF PROPOSED
LEASE, HELD WITHIN THE EXCEPTION - CLOSED
SESSION PROCEDURES – WRITTEN STATEMENT –
TOPIC DESCRIPTION REITERATING STATUTORY
AUTHORITY, HELD IN VIOLATION**

September 14, 2005

Tom Marquardt
Capital-Gazette Newspapers

The Open Meetings Compliance Board has considered your complaint alleging that the Annapolis City Council violated the Open Meetings Act in connection with a closed meeting held on July 27, 2005. The complaint reflected your belief that the purpose of the session was to discuss with the municipal attorney a contract for the use of the city-owned Market House. Your complaint asked us to consider whether a closed session on this topic was permitted by the Act and whether the City Council violated the Act's procedural requirements in closing the meeting. Specifically, the complaint alleged that the written statement prepared in advance of the session was inadequate.

In a timely response on behalf of the Council, Shaem C. Spencer, City Attorney, confirmed that the session did indeed relate to the lease of Market House. As described in the Council's response, the City Attorney "explained contractual provisions of the proposed lease, the rights and obligations of the parties and potential damages, if any." Concerning the written statement required under §10-508(d)(2)(ii),¹ the City Attorney acknowledged that the "interests of the attorney/client relationship could have been preserved had the statement included a more detailed explanation" and "might have been legally insufficient, as it failed to list a specific topic."

Based on the record before us, we have no reason to believe that the closed session extended to any matter beyond the providing of legal advice by the Council's

¹ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

attorney, a legitimate basis for closing a meeting under the Open Meetings Act. §10-508(a)(7). Thus, as to the basis for the closed meeting itself, we find that no violation occurred.

As to the written statement preceding the closing, given the Council's acknowledgment of its inadequacy, a detailed discussion is unnecessary. The Open Meetings Act requires that the written statement inform the public "of the reason for closing the meeting, including a citation of the authority under [§ 10-508] *and* a listing of the topics to be discussed." §10-508(d)(2)(ii) (emphasis supplied). We have repeatedly advised that parroting the statutory language is not enough. *See, e.g., 4 Official Opinions of the Maryland Open Meetings Board* 142, 145-146 (2005). While the Council cited the applicable statutory basis for the closed session, its explanation described the purpose of the closed session as a meeting "with counsel to obtain legal advice on a legal matter." By providing no explanation beyond a mere paraphrase of the statute, the Council violated the Act.²

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney J. McKeldin
Tyler G. Webb

² In your letter, you indicated that the statement should have explained that the purpose was to discuss with the City Attorney a contract for use of the city-owned Market House. This suggested description of the topic would indeed have been adequate, although we do not mean to suggest that only this description would have sufficed.